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THE LEGALITY OF THE PACIFIC BLOCKADE I

Towards the end of 1902, Mr. Balfour, then Prime Minister, was interpellated in the House of Commons as to whether there could or could not be such a thing in international law as a pacific blockade. The immediate occasion for this was the joint action of Great Britain, Germany and Italy in blockading the coast of Venezuela without any formal declaration of war. According to the press dispatches from Germany, the United States had declined to submit to the position of a neutral on the ground that—the status of belligerency not existing—there could be no such thing as a pacific blockade, and Sir Charles Dilke demanded to know whether similar representations had been received at the British Foreign Office. Mr. Balfour answered: "I think it is very likely that the United States will think there can be no such thing as a pacific blockade and I personally take the same view. Evidently a blockade does involve a state of war."¹ If the answer be somewhat vague as to the attitude of the United States, it at least pretty accurately reflects an objection once widely held by those who professed to speak with the voice of authority. "Could there be a greater contradiction than to speak of a pacific blockade!" exclaimed Gessner in his *Le Droit des Neutres sur Mer*, published in 1865.² To him, such a thing was a "monstrous institution."

Viewed from this angle—that a blockade imports belligerency—the case against the pacific blockade is strong. It is the status of belligerency alone which hampers, within certain well-defined limits, neutral liberty of action, but with belligerent rights go belligerent responsibilities, of which an alert neutrality will demand strict accountability. Such a code of laws takes scant account of the pacific blockade, which Professor Geffcken declares to be "an illicit expedient (*moyen abusif*) invented by France and Great Britain to injure weak states without assuming the responsibility of a state of war."³ Such a blockade, insofar as it has any recognized legitimacy in international law, is classified generically as an act of reprisal, one of the recognized measures just short of war. But a strict reprisal, it is maintained, should be special in its nature, something working injury only to the nation against which it is directed, whereas a pacific blockade, *if effective*—it is elementary to say that a blockade to be valid must be effective—hurts not only the quasi enemy but also third states. It interrupts neutral commerce. Jurisdiction over territorial seas, which by right of sovereignty belongs to the government of the blockaded port or coast, is likely to be assumed by the blockading force and this may be viewed as a belligerent act from the standpoint of third states.

¹ 116 *Parl. Debates*, 4th Series, 1490-91.

² *Peut-il y Avoir des Blocus Pacifiques* 215, 217 *et seq.*

³ (1885) 17 *Revue de Droit International* 146.

It is for these reasons that the opponents of the pacific blockade have refused to recognize it strictly as an act of reprisal. Behind this general line of argument they make their stand. But in spite of it all, in the face of a stubborn opposition which may be conceded to be sound in theory, the institution which has come to be called the pacific blockade has so far established itself during the last century as to extort a grudging recognition from the writers of text-books. Blockade, without open war at least, was not an infrequent occurrence during the nineteenth century.

At the session of the Institute of International Law, held at The Hague in 1875, the members filled out a questionnaire containing among other things this question: "Does the pacific blockade following actually recognized rules of international law constitute a means of regular coercion, authorizing the seizure and confiscation of ships attempting to violate it?" The majority of the answers were in the negative.⁴ Among the replies cited was that of Professor Westlake, to the effect that it was unworthy of a great state which had a grievance against a smaller one, to avail itself of this easy method of waging war without running its risk. In his edition of his *International Law*, published in 1907, this author makes the significant admission that the "pacific blockade as against the quasi-enemy, is too well established as a recognized institution to be longer attacked with serious hope of success."⁵ This statement may be fairly cited as typical of the shift in recent years, if not of sentiment, at least of opinion as to legitimacy. At the session of the Institute in 1885, on the motion of M. Perels, *conseiller rapporteur* of the German Admiralty, a special committee was named to study the right of blockade in time of peace. Among these members were such well-known names as Hall, Geffcken, Perels, and Sir Travers Twiss.⁶ The committee made its report at the session held in Heidelberg in September, 1887. Perels submitted what were apparently the majority views, concluding with the following recommendations, which were proposed for adoption by the Institute.

1st. The establishment of a blockade without war is not contrary to international law.

2nd. The pacific blockade must be officially declared and notified and maintained by a sufficient force; a delay should be accorded to the ships of nations not concerned (*hors de cause*), delay sufficient to ensure lading or unloading and to enable them to depart from the blockaded ports.

3rd. The ships of the blockaded power which do not respect such a blockade may be sequestered. When the blockade has ceased they must be restored to their owners with their cargoes, but without indemnity on any ground.

⁴ (1875) 7 *Revue de Droit International* 611.

⁵ 2 Westlake, *International Law* (2nd ed. 1913) 16.

⁶ (1887) 19 *Revue de Droit International* 124.

4th. The ships under foreign flag may simply be prevented from passing the line of blockade.⁷

In opposition to this, Geffcken, who fought legitimacy of the pacific blockade to the last ditch, presented a powerful minority report. He thus summarizes his main objections:

1st. The blockade cannot be justified outside of war; it constitutes a state of general reprisals, that is to say a state of war.

2nd. The blockade called pacific does not hit only the state it pretends to influence; it interrupts the commerce of all nations; this situation goes beyond the measure of simple reprisal and can only be justified by a state of war.

3rd. The blockade should seriously smite the blockaded state. Weak measures are ineffectual or they acquire the character of acts of war.

4th. It is wrong to invoke the interests of feeble states to legitimize the pacific blockade; this latter gives the powerful states a greater facility to coerce them without ever having recourse to war.⁸

In the end, after a full discussion, the Institute adopted a declaration in the following form:

"The establishment of a blockade without war (*en dehors de l'état de guerre*) cannot be considered as permitted by international law except under the following conditions:

1. Ships under a foreign flag can enter freely notwithstanding the blockade;

2. The pacific blockade must be officially declared and notified, and maintained by a sufficient force;

3. The ships of the blockaded power which do not respect such a blockade may be sequestered. When the blockade has ceased they must be restored to their owners, with their cargoes, but without indemnity on any ground."⁹

The project formulated by Perels recognizing the legitimacy of the pacific blockade was thus adopted with certain amendments. A motion to amend the preamble providing for the establishment of a blockade without war by adding the words "if a just cause be assigned as a motive" was defeated by a very narrow margin. The condition that ships under a foreign flag could enter freely notwithstanding the blockade was adopted unanimously and an amending proviso to this clause, "except when they carry contraband" was voted down.¹⁰ Later on, an attempt was made to have it declared in a *procès verbal* that the action with respect to contraband of war was not because the Institute approved of contraband or believed it legitimate but simply by reason of the difficulties surrounding the method of ascertaining contraband and that this question should therefore be regarded as reserved. This jettison in 1887 of a hitherto widely prevailing view among theorists is mainly interesting as a reflection of changing conditions. As a declaration of a private institute, it has of course, no binding force.

⁷ (1887-8) 9 *Annuaire de L'Institut de Droit International* 286.

⁸ *Ibid.* 295.

⁹ *Ibid.* 300-301.

¹⁰ *Ibid.* 299.

To sum up then in a preliminary way, this statement of DeBurgh made in 1868 in the main accurately reflects the real situation: "To blockade is, no doubt, generally speaking an act of war and incident to a state of war; and yet there have been in modern times instances in which this proceeding, although belligerent, was instituted during time of peace."¹¹

It may be freely conceded, to be sure, that the use of the term "pacific blockade" is not altogether happy and the suggestion made at the Heidelberg session that for *blocus pacifique* should be substituted *blocus en dehors de la guerre* has much to commend it.¹² The most that can be said for the prevailing nomenclature is that it is a convenient euphemism.

Gessner makes the charge, in his chapter before referred to, that British publicists deal only with blockade in time of war and significantly ignore the pacific blockade. It is true that the earlier publicists paid scant attention to this latter topic. Of late years this omission has in a measure been repaired, though even now it is wholly accurate to say that the leading authorities, English, American and continental, treat this particular subject in a way which still leaves much to be desired. Too often there is nothing more than a bald enumeration of the precedents unaccompanied by any adequate analysis. Westlake, for example, though his later discussion is far from superficial, deems it quite needless to enter upon any detailed review. But it is certainly highly desirable to get the correct historical background of a subject of such increasing rather than diminishing importance. This is especially so because some of the precedents which have come to be commonly accepted will be seen upon slight investigation to be open to serious challenge. Not a little inadvertent distortion of fact has crept in to confuse the real issue. In any event it will be interesting to see how far these same precedents conform to or fall short of the rules governing blockade—in other words, whether they fairly take on the character of a pseudo blockade even. It is plain at least that some of them do not.

ALLEGED BLOCKADE OF HOLLAND, 1833.

One of the earliest cited instances is a case in point. DeMartens says, "In 1833 France and England blockaded the Dutch ports without nevertheless breaking off the current diplomatic negotiations entered into with the Cabinet of The Hague upon the subject of the Kingdom of Belgium."¹³ and ¹⁴ Authority for the statement that a blockade was

¹¹ *The Elements of Maritime International Law* 121, footnote 2.

¹² (1887-8) 9 *Annuaire de l'Institut de Droit International* 297.

¹³ 3 *Traité de Droit International* (1887) 166.

¹⁴ Holland, *Studies in International Law* (1898) 137; 2 Westlake, *International Law* (2nd ed. 1913) 12: 7 Moore, *International Law Digest* (1906) 136; Wheaton, *International Law* (4th ed. 1904) 415, seem to fall into the

established seems to be totally lacking. Hall makes no mention of it in his list. What actually happened was that England and France placed a general embargo upon Dutch ships and cargoes in their respective territorial waters and in effect prohibited trade with the Netherlands. The British Order in Council dated the 6th of November, does not mention the word blockade.¹⁵ It is possible, to be sure, that the directions given the British naval commanders, to detain and bring into port Dutch merchant ships and vessels, may have had the effect of virtually blockading the Dutch coast so far as Dutch shipping was concerned, but there is no evidence of any violation of Dutch territorial waters. Furthermore the orders were strictly limited to Dutch ships and cargoes and not the slightest effort was made to interfere with neutral ships or cargoes. On the 16th of November, 1832, the King of the Netherlands issued a virtual order of reprisal reciting that, in consideration of the fact that the Governments of Great Britain and France had put an *embargo* on Dutch ships and cargoes finding themselves in the ports of those kingdoms or which might desire to enter there, all French and English vessels in Dutch jurisdiction would be required to depart within three days. All such vessels arriving were to be sent away and not admitted until ships under the Dutch flag were allowed as formerly to enter freely into the ports of England and France.¹⁶ Throughout the somewhat voluminous diplomatic correspondence which followed the word *blockade* is not found, though references to the *embargo* are numerous.

Bulmering, although he recognizes that the separation of Belgium and Holland had been decreed at the Conference of London in December, 1830, and that at the same Conference on the 28th of January, 1831, Belgium had been recognized as an independent state, nevertheless, criticizes Great Britain for sharing in coercive measures, inasmuch as she had been a party to the Treaty of Vienna of 1815, providing for the union of the two states Holland and Belgium.¹⁷

The result of all these coercive measures was that the Netherlands finally adhered to the international arrangements which proclaimed the independence and neutrality of Belgium. The treaty signed at London on the first of May, 1833 provided in the 1st article that the embargo placed upon the ships, vessels and goods of the Netherlands was to be taken off and that the vessels detained, together with their cargoes, were to be immediately released and restored to their respective owners.

same error. See also to the same effect, Bulmerincq, *Le blocus pacifique et ses effets sur la propriété privée* (1884) 11 *Journal du Droit Privé* 570. 3 Calvo, *Le Droit International* (5th ed. 1896) 536, puts it this way, "A third example of the pacific blockade took place in 1833. To overcome the resistance of the King of The Netherlands to the separation of Belgium, accorded in principle by the Treaty of the 18th of November, 1831, France and Great Britain, upon the authority of decisions reached at the Conference of London, declared conjointly a general *embargo* on Dutch ships and *established at the same time, without breaking their pacific relations with the Cabinet of The Hague, a blockade of all the ports and coast of Holland.*" (Italics are the writer's.)

¹⁵ 19 British State Papers (1832) 1420.

¹⁶ *Ibid.* 1422.

¹⁷ (1884) 11 *Journal du Droit International Privé* 571.

Reciprocally, reprisal measures with respect to English and French flags were revoked.¹⁸

The embargo is a well-recognized form of reprisal and there seems to be no reason therefore for confusing this instance of 1832-33 with the pacific blockade. Geffcken was clearly right in separately classifying it as an *embargo*.¹⁹

BRITISH NAVAL REPRISALS AGAINST BRAZIL, 1862.

The British naval reprisals against Brazil in 1862 have also been quite generally classified, erroneously it would seem, as another instance of pacific blockade. Certainly the statement which some authors make that Great Britain instituted a blockade at this time is inaccurate. No such formal action was taken and it is inconceivable that Great Britain with its own precedents staring it in the face, which it has pretty scrupulously followed, would have undertaken a blockade in 1862 against Brazil any more than against Holland in 1833 without conforming to the recognized rule in international law calling for some form of official declaration and notice. No such declaration or notice was ever issued.

The British differences with Brazil grew out of the plunder of the wreck of the British barque Prince of Wales off the coast of the Province Rio Grande do Sul about seventy miles to the south of the city of that name, in June, 1861, and the alleged ill-treatment of officers of the British ship Forte by a Brazilian police guard in June, 1862. On October 8, 1862, Earl Russell instructed Minister Christie to demand indemnity and satisfaction on account of the two incidents.²⁰ The exact form which the reprisals were to take, if it was found necessary to have recourse to them, was left to the discretion of the Admiral in command of the British fleet.²¹ The Brazilian Government on the 29th of December, in response to the formal demand of the British Minister, declined to accede to the principle of responsibility attributed to it by Great Britain and refused to pay any indemnity except under compulsion by superior force.²² On the following day the Minister called upon Rear-Admiral Warren to resort to measures of reprisal and at the same time in a circular explanation addressed to the British consuls in Brazil, he stated that: "Reprisals are a well-understood and acknowledged mode of proceeding among nations for obtaining justice which has been denied, and they do not constitute an act of war."²³

The evidence then, does not fairly support the claim that there was here a pacific blockade in any proper sense of this somewhat elastic term. The claim apparently rests upon a statement made in a dispatch dated January 8, 1863, from Minister Christie to Earl Russell wherein the assertion is made that the mode of proceeding deliberately adopted "has caused a virtual blockade of the port of Rio for Brazilian vessels

¹⁸ 20 *British State Papers* (1833) 283-4.

¹⁹ (1887-88) 9 *Annuaire de L'Institut de Droit International* 287.

²⁰ 54 *British State Papers* (1862) 690.

²¹ *Ibid.* 718.

²² *Ibid.* 753-54.

²³ *Ibid.* 774-5.

"has caused a virtual blockade of the port of Rio for Brazilian vessels going out, from the 31st ultimo to the 6th of this month."²⁴ It is also true that later on when the Brazilian Minister addressed his formal demand on May 5, to the British Government for counter-satisfaction, he did complain that while British naval vessels outside gave chase to Brazilian merchant vessels in the territorial waters of the Empire, a British cruiser remained inside the port of Rio Janeiro and virtually blockaded it.²⁵ Earl Russell in his reply on May 19, declined to "enter into any question as to the propriety or execution of the *reprisals* to which Her Majesty's Government deemed it necessary to have recourse."²⁶ The careful avoidance of an admission that any form of blockade had existed, coupled with the complete failure to issue some form of official notice, in accordance with a practice firmly established and universally recognized long before 1862, are most significant.

The matter of the controversy growing out of the encounter of the three officers of the flag-ship *Forte* and the Brazilian police guard was submitted to the arbitration of the King of the Belgians.²⁷

Bulmering follows Fauchille,²⁸ in taking England to task for exacting vengeance for what he calls the pretended pillage of an English barque by Chilean subjects, and it is to him inconceivable how the latter country could justify the blockade of the capital of Brazil for an act of violence committed by such subjects. The answer, of course, is that the alleged outrages were committed by persons over whom Brazil had complete jurisdiction. In point of fact however, the British demand was predicated upon the proposition that the Brazilian Government must be "considered responsible for probable murder and for certain robbery *committed by its subjects* upon helpless foreigners."²⁹ Brazil seems nowhere to have denied that her subjects and not aliens were concerned in this affair.

BLOCKADE OF NORWAY, 1814.

The real history of the pacific blockade has been quite generally conceded to date from 1827, when Great Britain, France and Russia blockaded the coast of Greece, then under Turkish control. The Swedish writer Söderquist challenges this view. Quite aside from his apparent agreement with Falcke that the blockade of 1827 is in itself doubtful, he insists that the historical origin of the pacific blockade goes back to 1814 when Sweden and England in effect blockaded pacifically the shores of Norway.³⁰ In order to indemnify Sweden for her great losses during the Napoleonic wars it was proposed to unite Norway with Sweden and negotiations with several of the great powers were conducted to this end. The nations forming with Sweden

²⁴ *Ibid.* (1863) 740.

²⁵ *Ibid.* 836.

²⁶ *Ibid.* 838.

²⁷ *Ibid.* 835.

²⁸ Fauchille, *Du Blocus Maritime* (1882) 41.

²⁹ 54 *British State Papers* (1862) 718. (Italics are the writer's.)

³⁰ Nils Söderquist, *Le Blocus Maritime* (1908) 60.

in 1813 the last coalition against Napoleon promised their cooperation. By article 2 of the treaty of alliance concluded with England at Stockholm on the 3rd of March 1814, British naval cooperation was promised, if necessary, in concert with the Swedish and Russian troops. The Norwegians revolted, proclaimed their independence and lodged the supreme power in the hands of the former Danish governor, Prince Christian Frederick. Sweden thereupon pronounced a blockade of the coast of Norway on the 4th of April, 1814. By the terms of the Swedish order, every ship destined for Norway and captured by Swedish vessels of war, was declared good prize, if loaded with contraband or with corn or provisions; if laden with other merchandise it was to be released the first time with a verbal warning to the captain and a notice written on the ship's papers that an attempt to again re-enter Norwegian waters would result in the application of prize rules. All ships leaving Norway were to be captured without regard to flag or cargo.³¹ Christian Frederick counted on the protection of Great Britain and sent a deputation to obtain recognition of the new state, but the British authorities felt compelled to request the Norwegian mission to leave the country and on the 29th of April declared in turn Norway to be in a state of blockade. The notification stated that the necessary measures had been taken "for the blockade of the ports of Norway and that from this time all the measures authorized by the law of Nations will be adopted and executed with respect to all vessels which may attempt to violate the said blockade."³²

Actual hostilities between Norway and Sweden broke out on the 27th of July, but Söderquist makes the point that there can be no doubt that the blockade was established in time of peace and that while the Swedish blockade ceased to be pacific from the moment war commenced, it was nevertheless a war between Sweden and Norway only. England took no part in actual hostilities and never admitted that it was in a state of war with Norway. The English blockade therefore in this sense preserved its pacific character throughout.

Söderquist expresses some skepticism, to be sure, as to whether the blockade was effective. On the part of Sweden, he declares that it was maintained, if not exclusively, at least largely by privateers, the regular fleet being assembled near the frontier in anticipation of the opening of hostilities, but he cites evidence that the British sent eight ships of war ranging from ten to thirty-six cannons.³³ Christian Frederick abdicated by the convention of armistice signed on the 14 of August and it is significant that the matter was deemed important enough to call for a stipulation that the blockade of the Norwegian ports was to be raised from the date of signature and exportation and importation was made free except for the Norwegian duties. The blockade was

³¹ *Ibid.* 284.

³² 1 *British State Papers* (Part 2, 1814) 1277.

³³ Söderquist, *op. cit.* 291.

raised without delay by Sweden, but England, on the contrary, maintained it by error into September.³⁴ The British orders to discontinue the blockade were formally given on September 3.³⁵ It must be fairly conceded that Söderquist proves his case. Not only was the British blockade of the Norwegian coast formally declared, but there seems to be no doubt that it was a blockade outside of a state of war so far as England was concerned.

JOINT BLOCKADE OF GREECE, 1827.

On the other hand the joint blockade of the coast of Greece in 1827 was unaccompanied by any formal notification. The demonstration against Turkey resembled the blockade of Norway in 1814 in that it was not an act of reprisal directed against an offending nation for alleged injury; it was purely and simply an act of intervention. Great Britain, France and Russia reached an agreement in London early in July 1827 to end the prolonged sanguinary struggle between the Turks and Greeks. A determined effort was made to persuade the Sublime Porte to accept the mediation of the three powers in accordance with the terms of the armistice proposed by them, and at a protocol of a conference held on the 27th of July at Constantinople, it was announced that the refusal would place the powers under the necessity of having recourse to the measures which they should judge to be the most effectual to the attainment of their object.³⁶ In case of the refusal of the Porte to admit the mediation and to consent to the armistice, the allied naval officers were instructed to intercept any expedition of men and arms against Greece and going from either Turkey or Africa in general. The allied representatives had their well-founded suspicions that their mediation would be rejected. A report of the Dragomans of France, Great Britain and Russia on the 3rd of August, quoted Reis Effendi as saying:

"My positive, absolute, definite, unchangeable, eternal answer is that the Sublime Porte does not accept any proposition concerning the Greeks, that it will persist in its own will forever and ever and to the day of the last judgment."

A second and final ultimatum was delivered on the 30th of August,³⁷ and thereafter the acts of the allies became those of frank intervention. The instructions to the British Vice-Admiral were to take a position off the harbor of Navarino and he was requested not to use force unless absolutely necessary. The junction of the English and French squadrons probably took place on September 20.³⁸

"When the Sultan received information that the Treaty of London had been put into execution and that his fleet was locked up by the actual blockade of Navarino he did not allow any ebullition of wrath

³⁴ Söderquist, *op. cit.* 295.

³⁵ *Supra*, footnote 32.

³⁶ 32A *Parl. Papers* (1830) Affairs of Greece 181.

³⁷ 32B *Parl. Papers* (1830) 127 *et seq.* ³⁸ *Ibid.* 155.

to escape him. The allies relied on the engagement of Ibrahim not to quit Navarino until he should have received further instructions from Constantinople. The British and French squadrons therefore for the most part sailed away on other errands. Ibrahim asked for instructions on the 26th of September, but he sailed out on the 30th of September before he could have possibly received any reply. But he was forced to return."³⁹

The direct result of this blockade was the battle of Navarino and the destruction of the Turkish fleet on the evening of the 20th of October. Notwithstanding, the representatives of the great Powers continued to give assurances that they were still at peace with the Sublime Porte. Sympathy cannot be altogether withheld from Reis Effendi for his inability to grasp this new development of European diplomacy. He exclaimed: "The case is actually as if in breaking a man's head I at the same time assured him of my friendship. Would not such a proceeding be absurd? Such, however, is the present question. Your ambassadors talk about peace and they have broken peace."⁴⁰ This pardonable outburst, which has been so widely quoted in connection with this affair, clearly related to the naval engagement and the loss of the Turkish fleet rather than to the blockade itself. The representatives of the Powers subsequently demanded their passports and on the 8th of November, 1827, Russia became a belligerent.

FRENCH BLOCKADE OF THE TAGUS, 1831.

The first instance of resort to a measure of *reprisal*, assimilating in its inception at least, to a pacific blockade, occurred in 1831 when the French blockaded the Tagus. In that year serious differences in the matter of the alleged mistreatment of French subjects arose between France and the *de facto* government of the Portuguese pretender Dom Miguel, who had not been recognized by either France or England. The acting French consul, on the 29th of March, complained of sundry acts of injustice and oppression aimed at French subjects and demanded immediate redress, but the Portuguese authorities declined to receive his protest on the ground that he had no diplomatic standing under the law of nations,⁴¹ though there was evidence that he was furnished with a document signed by Dom Miguel himself, authorizing him to act as consul-general and that in this capacity there had been conferences upon the very questions at issue. Thereupon, the consular representative withdrew and some weeks afterward a French naval force arrived off the Tagus. A formal ultimatum followed on May 15, which included among other things the liberation of two French prisoners, the dismissal of the judges responsible for the infliction of heavy penalties and the payment of reparation. To these demands an evasive answer was returned. Reprisals followed. All Portuguese vessels entering the Tagus were detained and likewise two ships of war encountered by the

³⁹ 69 *Annual Register* (1827) 314.

⁴⁰ 32B *Parl. Papers* (1830) 187.

⁴¹ 18 *British State Papers* (1831) 420.

French squadron at sea. The ships of war and merchantmen were subsequently sequestered in Brest. There is no evidence of any interference with neutral commerce. The French Admiral announced that the demonstration was against Dom Miguel and not against the Portuguese nation and that the property captured was merely sequestered to be again restored when reparation had been made.⁴² The Portuguese authorities pursued a temporizing policy, obviously relying upon an existing treaty for British protection and mediation. Lord Palmerston repudiated any such construction.⁴³

Finally on the 1st of July, the guns of Fort Casces opened fire upon a part of the French squadron which was engaged in the pursuit of Portuguese merchant vessels. The fort was soon silenced, about thirty soldiers were reported severely wounded and five or six lost their lives. The British consul-general reported this instance to the British Minister at London "as the first act of positive hostility that has occurred between the two countries beyond the mere detention of Portuguese vessels by the French ships of war."⁴⁴ This brought matters to a head. On the 8th of July, Admiral Roussin, commanding an augmented French fleet, made a demand for instant and ample reparation for each and every grievance and declaring that in case of refusal, war being *de facto* declared between Portugal and France, hostilities would be the immediate consequence. Twenty-four hours was given for reply.⁴⁵ On July 11, the French fleet entered the Tagus and eight Portuguese ships of war surrendered without firing a shot. The Portuguese Government then yielded. The Convention was signed off Lisbon on July 14, in which Dom Miguel yielded to all the French demands.⁴⁶

Most writers who give any details of this particular blockade assert that the Portuguese vessels, both public and private, were restored. Moore, for example, adopts Calvo's statement that the treaty of the 14th of July, 1831, stipulated "the restoration, pure and simple, of all the ships of war and of commerce, captured by the squadron of Admiral Roussin."⁴⁷ The evidence indicates that this statement is only partially true. The French Commander took the position that a state of war had in fact intervened between May 15 and July 11 and the ships of war which struck their colors in the Tagus were to be considered as "prizes of war and not as vessels detained by way of reprisal." The Portuguese Government energetically protested against their detention and appealed to Great Britain in support of their claim. Palmerston referred to the King's Advocate, for his decision, the question:

"Are these Portuguese Ships-of-War, so captured in the Tagus, legitimate Prizes of War? Or, in other words, do the hostilities which took place in the Tagus *and in the progress of which, a Portuguese Fleet gratuitously surrendered to the French, entitle France to retain that Fleet*, after having received from Portugal complete satisfaction

⁴² *Ibid.* 385. ⁴³ *Ibid.* 380. ⁴⁴ *Ibid.* 388. ⁴⁵ *Ibid.* 407. ⁴⁶ *Ibid.* 410 and 421.

⁴⁷ 3 Calvo, *op. cit.* 535.

of all those demands, to enforce which the hostilities were commenced?"^{47a}

This official took the position that the answer depended upon the terms of the convention, but that as a matter of law "the Portuguese ships having surrendered after the declaration and during the pendency of hostilities, although they made no resistance, are to be considered as legitimate Prize of War and not as seized by way of reprisals only."⁴⁸ He went on to say:

"This latter species of seizure is resorted to, with the view of obtaining satisfaction for injuries alleged to have been received, and in order to prevent the necessity of having recourse to actual hostilities; and may be looked upon as a provisional measure, the character of which is to be determined by subsequent events. If the reprisals should produce a satisfactory result, followed by a restoration of relations of peace between the two countries, the property seized would be considered as having been placed under temporary sequestration only, and would be restored to the original proprietors. But, should hostilities once commence, the seizure would then assume a hostile character *ab initio*; so that those ships which were seized before, as well as those which were captured after, that event, would become the property of the capturing state, and the title of the former owners be divested."

The King's Advocate accordingly held that the Portuguese would not be entitled to restitution in either case except under the terms of the convention and that the only question was whether those terms were sufficiently comprehensive to include those ships of war which were captured *after* the declaration of hostilities or whether they affected only those ships which had been seized by way of reprisals. On the assumption that the latter was the true construction, he was of the opinion that "the French Government are legally entitled to retain possession of the ships of war captured in the Tagus, though complete satisfaction may have been received from Portugal of all the demands, to enforce which the hostilities were commenced."⁴⁹

The King's Advocate was right in his assumption. The 18th article of the treaty is very clear upon this point. It provided only for the return, upon the payment of the sequestration costs, of the Portuguese *merchant* vessels which had been seized and convoyed to France. A protocol to this article provided "as to the two vessels of war seized *before* the arrival of the Admiral in the Tagus, the Admiral commanding the squadron consents that they may be included in the category of merchant vessels seized and returned upon the same conditions as the latter."⁵⁰ In transmitting a copy of this treaty to Viscount Palmerston, the British Ambassador at Paris enclosed "also a protest of the Portuguese Government against the detention by the French of the Portuguese ships of war, *of which they had taken possession in the Tagus.*"⁵¹

^{47a} Italics are the writers.

⁴⁸ 18 *British State Papers* (1831) 421.

⁴⁹ *Ibid.* 422.

Portugal denied consistently that a state of war had existed, pointing to the fact that France had not published the manifesto necessary to constitute a state of war and that she had not according to the law of nations, declared that the ports of the Kingdom were blockaded.⁵²

Palmerston however declined to interfere to obtain the restitution of the ships of war which had been captured in the Tagus, and on the 25th of August, he advised the Portuguese Government that "according to the law of nations as applicable to the circumstances in which the ships were taken, they appear to be good Prize of War."⁵³

Bulmering deals with this case with some asperity. He contends that it is governed strictly by the law of reprisals. Asserting that reprisals can only be exercised either by equivalent acts or similar acts, he declares that the coercive measures here resorted to were altogether disproportionate to the alleged offense. He accordingly condemns the action of the French as contrary to the law of nations and moreover as an excess of unauthorized power.⁵⁴ There is nothing in the law of reprisals which limits retaliation to an act of retorsion and what is an equivalent act is obviously a matter of some elasticity. In the case of the Prince of Wales and Forte, the British naval officers, as we have already seen, were instructed to seize and detain such Brazilian ships as might be considered necessary as an equivalent for the British demands. The seizure of five Brazilian ships was the result.⁵⁵ In the instant case, it is to be conceded that a period when English neutrality had no tinge of benevolence in it for France, the facts as set forth by the French, found, in the main, ample corroboration in the reports of the diplomatic and consular officials of England in Portugal. The incident itself, however, may be viewed as a dubious example of the pacific blockade, inasmuch as actual hostilities—*de facto* war, as was claimed by the French—resulted. Fauchille asserts that a *maritime* war is not inconsistent with a pacific blockade.⁵⁶

The British blockade of New Granada took place in January, 1837. Few facts about it have ever been published, though it is one of the best examples of a pacific blockade not leading to actual hostilities and instituted as an act of reprisal for alleged injuries. On the 31st of January, 1836, Joseph Russell, the British pro-consul or vice-consul at Panama, in a letter to Lord Palmerston, recited the details of an alleged assault upon him on the night of the 20th of that month, in the most public street in Panama, by one Paredes. The quarrel between the two men was the result of personal differences growing partly out of some financial transactions. Subsequent advices to the British Foreign Office indicated that the origin of the scuffle was obscured in a mist of mutual recriminations. When the new consul, Thomas Turner, arrived on the scene he reported, on March 1st, that he found the

⁵⁰ *Ibid.* 413. ⁵¹ *Ibid.* 410. ⁵² *Ibid.* 431. ⁵³ *Ibid.* 427.

⁵⁴ (1884) 2 *Journal du Droit International Privé* 572.

⁵⁵ 54 *British State Papers* (1862-3) 775, 803-4.

⁵⁶ Fauchille, *Du Blocus Maritime* (1882) 41-2.

consulate in possession of a military force and Russell in so weak a state in consequence of the severe wound he had received as to be unable to attend to business. A little later on March 7, the Alcalde sealed up the consulate and took away the consular seal.⁵⁷ Paredes, who was slightly injured, was out in a few days and hastened to accuse Russell of a premeditated attempt to assassinate him. On May 20, Consul Turner wrote, although Russell could not procure legal assistance, he nevertheless made out such a strong case in defense that the main accusation failed entirely and he was condemned under an obsolete Spanish law of 1761, raked up for the occasion, to six years imprisonment and the costs of the suit for bearing concealed arms.⁵⁸ The record was referred to the superior tribunal of the district for review and confirmation. Palmerston did not act with any undue haste. After receiving full reports of the matter, he addressed on August 31st, instructions to the British Minister at Bogota to demand from the Government of New Granada "satisfaction for the insult which has been offered to Great Britain and reparation to Mr. Russell for the injuries which he has sustained."⁵⁹ The demand included the immediate liberation of Russell, compensation for the injuries inflicted upon him, the dismissal of local authorities guilty of misconduct in the matter, and the restitution of the British consular office, together with the archives and seals, accompanied by full and ample apology. The admiral of the Pacific Fleet was instructed to cooperate with the Minister in "any way that may be deemed most advisable to enforce the just demands of His Majesty's Government."⁶⁰ On November 28, the British Minister submitted the demands formally to the Granadan Minister for Foreign Affairs. The sum of one thousand pounds sterling was specifically mentioned as the sum to be paid Russell. On December 2, the Granadan Minister pointed out that the tribunal at Magdalena, where the Russell case had gone on appeal, had, on the 26th of November, decided that the case should be referred back to the Court of First Instance for examination and decision upon the point of competency of its jurisdiction. On December 10, the Minister suggested to the commander of the British naval forces the advisability of immediately establishing a rigorous blockade of the Granadan ports in the Pacific. On the following day he repeated this recommendation, suggesting a preliminary trial "of what may be compulsion without being war."⁶¹

It is evident that the Granadan Government was kept informed of the development of affairs and knew that the settlement of the controversy had passed out of diplomatic into naval hands. On December 12, the President of New Granada issued a comparatively restrained proclamation calling upon the people to repel the unjust and unexpected aggression of the British naval forces. On December 31, the Governor of Santa Martha tried his hand at the same thing and

⁵⁷ 26 *British State Papers* (1836) 161. ⁵⁸ *Ibid.* 146. ⁵⁹ *Ibid.* 185.

⁶⁰ *Ibid.* 186. ⁶¹ *Ibid.* 226 and 231.

the result was a state paper which is not without a touch of humor.⁶²

"Granadans! Relying on the courage of the inhabitants of this province, I dare insure that if, unfortunately, the trumpet of war shall sound, proud Albion will bite the dust on these shores, and will learn to respect the rights of a free people.

English! The conquerors of the proud Lion of Iberia are not frightened by the neighings of seahorses!"

The conference between the British naval authorities and a commissioner designated by the Granadan Government took place on January 20, but it was abortive as the Commissioner insisted he had no power to order the release of Russell, to which the British Commodore replied that this refusal obliged him "to notify that the ports of New Granada are to be considered externally blockaded and that they will very soon experience the rigors of a general blockade."⁶³

It would seem that the blockade itself was technically declared on January 10, 1837 at Jamaica, that a part of the British squadron arrived off Carthagena, January 17, but that the declaration of the blockade was withheld until after the conference on the 20th.⁶⁴ Meanwhile the Court of First Instance had reached the conclusion that it was incompetent to try a consul of a foreign power and consequently decreed that Russell should be immediately released. This was done on January 4, 1837 after an incarceration of eleven months and fifteen days.⁶⁵ He arrived in a British war vessel off Carthagena on the evening of the 31st of January and the news of his release removed the only obstacle in the way of a resumption of negotiations. On the 2nd of February, Commodore Peyton transmitted to the British Minister, the minutes of a conference held that day with General Lopez, bringing all matters into adjustment substantially in accord with the British demands.

From this report it appears that the blockade was raised on the same day, having actually existed since the 20th of the preceding month. There is no affirmative evidence that more than four vessels were actually detained, one of them a French barque.⁶⁶ But the British official reports make it plain that the blockade was thoroughly effective. Corroboration of this is found in the message of the Granadan President on the opening of Congress on the first of March, 1837, wherein he states that all the ports of New Granada in both seas were blockaded, the port of Carthagena "with so much rigour that even letters addressed to Granadan citizens and authorities were intercepted."⁶⁷ Upon the raising of the blockade the vessels detained were permitted to proceed to their destination.⁶⁸

[TO BE CONTINUED]

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⁶² *Ibid.* 241. ⁶³ *Ibid.* 255. ⁶⁴ *Ibid.* 256-7. ⁶⁵ *Ibid.* 266.

⁶⁶ *Ibid.* 257 and 263.

⁶⁷ 25 *British State Papers* (1837) 1046-7. ⁶⁸ *Ibid.* 26. *British State Papers* 265.